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SUBJECT: U.S.-EU SECOND STAGE AIR TRANSPORT NEGOTIATIONS

This is an action request for all Embassies to EU Member States, Oslo, and Reykjavik. See paragraph 2.

¶1. Summary. The seventh -- and possibly decisive -- round of second stage U.S.-EU air transport negotiations will take place in Madrid February 15-17. The November 3, 2009 U.S.-EU Summit Declaration calls for a second stage agreement by the end of 2010. To meet this timetable, both sides must take a realistic and pragmatic approach.

¶2. Action Request. Posts are requested to approach host government Transportation Ministry officials at an appropriately high level, and, drawing on the points provided in paragraph 8 below, urge that the European side take a realistic and pragmatic approach in the negotiations in order to reach a second stage agreement, including benefits for both sides, by the end of 2010. Posts may also approach Foreign Ministry or other host government officials, if it would be constructive.

Background

¶3. In March 2007, after three-and-a-half years and eleven formal rounds of negotiations, U.S. and EU negotiators initialed the text of a comprehensive, first-stage Air Transport Agreement. The Agreement was signed in April 2007 and has been provisionally applied since March 30, 2008. The Agreement replaces 16 existing bilateral Open Skies agreements and five more restrictive aviation agreements between the United States and Member States, and establishes an "Open Skies-Plus" framework applicable to the United States and all 27 EU Member States. Norway and Iceland are joining the Agreement on the European side.

¶4. The Agreement contains all the essential elements of an Open Skies agreement and elements beyond those in traditional Open Skies accords. The Agreement includes a binding commitment to undertake negotiation of a second stage agreement, and identifies these items of priority interest to one or both of the parties to be included on the agenda: further liberalization of traffic rights; additional foreign investment opportunities; effect of environmental measures and infrastructure constraints on the exercise of traffic rights; further access to government-financed air transportation; and provision of aircraft with crew.

¶5. Second stage negotiations began in May 2008, and six rounds have taken place. The negotiations have been constructive, and significant progress has been made across a range of important issues, including security, regulatory cooperation, and the role of the Joint Committee established by the Agreement. Further work remains to be done on other key areas, including market access, investment, environmental constraints, cooperation on environmental issues, and the social (labor) dimension. Representatives of Norway and Iceland participate in the negotiations as observers on the European delegation.

¶6. At the November 3, 2009 U.S.-EU Summit President Obama and his EU counterparts called for a second stage air

transport agreement by the end of 2010 which includes benefits for both sides. EU leaders at the summit included President of the European Commission Jose Manuel Barroso, Commissioner Benita Ferrero-Waldner, Swedish Prime Minister Fredrik Reinfeldt and Foreign Minister Carl Bild, representing the EU Presidency, and High Representative Javier Solana.

¶17. The seventh -- and potentially decisive -- round of the second stage negotiations will take place in Madrid February 15-17. To reach agreement within the timetable the leaders have set, both sides must now take a very realistic and pragmatic approach to developing nuanced agreement language necessary to bridge the gap between the U.S. and EU positions.

¶18. Begin points.

-- At the November 3, 2009 U.S.-EU Summit President Obama and his EU counterparts called for a second stage U.S.-EU air transport agreement by the end of 2010 which includes benefits for both sides.

-- Spain has said that among its top objectives during its Presidency is achieving agreements with the United States, including a second stage air transport agreement.

-- Spain is hosting the seventh round of U.S.-EU second stage air transport negotiations in Madrid February 15-17.

-- Significant progress has been made in past rounds on a broad range of subjects. The United States has undertaken a thorough analysis of the remaining issues and is convinced that compromise by both sides will be required if we are to reach a second stage agreement by the end of 2010.

-- Both sides must be realistic about what is achievable, in the time available, tempering ambition with pragmatism.

-- The United States recognizes that our principal request -- fundamental change in the way decisions are made on noise-related operational restrictions at EU airports -- presents difficult policy and legal challenges for Member States.

-- We hope that European participants understand that a commitment to change U.S. law on ownership and control of U.S. carriers is not achievable within the timeframe set by our leaders for achieving a second stage agreement.

End points.

¶19. Department appreciates Posts' assistance.

CLINTON